Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

(2)

No. 85-457

J. D. WESTBROOK ..... *Petitioner*

vs.

STATE OF ARKANSAS ..... *Respondent*

OPPOSITION

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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APP

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J. D. WESTBROOK ..... *Petitioner*

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REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I.

THERE IS AN ADEQUATE AND INDEPENDENT STATE GROUND WHICH SUPPORTS PETITIONER'S CONVICTION.

This Honorable Court should deny petitioner's petition for writ of certiorari because there is an adequate and independent state ground which supports petitioner's conviction. It is well established that this Court will not review a state court decision that rests on separate, adequate and independent state grounds. *See Michigan* v. *Long*, 463 U.S. 1032 (1983).

In the instant case, the Arkansas Supreme Court decided, as matter of state law, that petitioner had failed to make a necessary proffer during his hearing on his motion for a new trial.

Because the petitioner failed to make the necessary proffer, the Arkansas Supreme Court held that it could not reverse the trial court's decision and grant a new trial to petitioner. *See* page 4 of the Appendix to the petitioner's petition. Petitioner's failure to make the necessary proffer of the expected testimony of juror Long is an adequate basis for the Arkansas Supreme Court's affirmance of his conviction and is entirely separate from the alleged prejudicial error in seating juror Long in the first place.

CONCLUSION

THEREFORE, respondent respectfully requests that this Honorable Court deny petitioner's petition for writ of certiorari to the Supreme Court of Arkansas.

Respectfully submitted,

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